Lim Poh Chuen & Anor v Pendaftar Hakmilik Negeri Perak

HIGH COURT (IPOH) — ORIGINATING SUMMONS NO AA-24NCVC-308–07 OF 2023
MOSES SUSAYAN JC
9 MAY 2022

Civil Procedure — Action — Mode of commencing proceedings — Conversion of land tenure from perpetual to leasehold by land registrar — Plaintiff filed originating summons seeking correction to restore original perpetual ownership or freehold status — Whether plaintiff ought to file judicial review application instead of originating summons

Constitutional Law — Fundamental liberties — Right to property — Conversion of land tenure from perpetual to leasehold by land registrar — Plaintiff filed originating summons seeking correction to restore original perpetual ownership or freehold status — Whether conversion of land tenure from perpetual to leasehold in violation of art 13 of Federal Constitution — Federal Constitution art 13

Land Law — Title — Conversion and subdivision of freehold lands — Conversion of land tenure from perpetual to leasehold by land registrar — Plaintiff filed originating summons seeking correction to restore original perpetual ownership or freehold status — Whether plaintiff ought to file judicial review application instead of originating summons — Whether conversion of land tenure from perpetual to leasehold in violation of art 13 of Federal Constitution — Whether conversion of land tenure from freehold to leasehold by land administrator or any government authority was ultra vires — Whether developer or previous owner consented to subdivision terms — Federal Constitution arts 4(1), 8(1) & 13 — National Land Code ss 76, 130, 134, 197, 204E(3A) & 380

The main issue in the present case revolved around the plaintiffs' contention that they were the registered owners of two pieces of land which were originally held under a master title with perpetual ownership but following a subdivision by the land registrar ('the defendant'), the individual titles issued for these lands were erroneously registered with a 99-year leasehold status instead of in perpetuity. The plaintiff argued that: (a) the situation in this case represented a clear violation of their constitutional rights as registered landowners under art 13 of the Federal Constitution ('the Constitution'); (b) the defendant only had the authority to direct the registered landowners to surrender land titles

under specific sections of ss 130 and 134 of the National Land Code ('the NLC') but the conversion of land tenure from perpetual to leasehold by the defendant was not aligned with the NLC and ultra vires the Constitution; and (c) since the original issuance of title was in perpetuity according to s 204E(3A) of the NLC, thus, the re-alienated land, post-subdivision should also be in perpetuity. The plaintiffs sought, by way of originating summons, a correction to restore the original perpetual ownership or freehold status. In relation to this application, the plaintiff relied on s 380 of the NLC to submit that the registrar of titles was allowed to correct any mistakes in land titles and in support of this argument, the plaintiff cited the principle of equality before the law as stated in arts 4(1) and 8(1) of the Constitution and a previous similar case (AA-24NCvC-428–09 of 2016), where a similar order was granted by the court. In opposing the plaintiff's application, the defendant argued that the plaintiff should have filed a judicial review application instead of originating summons. The defendant also argued that pursuant to ss 197 and 76 of the NLC (Revised 2020), the conversion of land from freehold to leasehold was within the prerogative of the State Authority. The defendant further emphasised that it was not their responsibility to inform the plaintiffs about the lease period, as the plaintiffs had purchased the land from the developers/previous owners who had agreed to the lease terms with the State Authority.

Held, allowing the plaintiffs' claim with no order as to costs:

(1) The defendant's challenge regarding the mode of commencing proceedings, which should have been by way of judicial review, was not a matter of course. It was merely a general rule with exceptions. In this regard, the court referred to the case of *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 1 MLJ 255 ('*Leo Leslie*'s case') which had referred to the case of *Litus Jau & Anor v Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 MLJ 794. Given the decided cases were directly on point and the specific circumstances of the case where the dominant issue in the present case was the issue of a private rights, the use of originating summons to commence proceedings was appropriate, adhering to established exceptions to the general rule requiring judicial review (see paras 17–18).

(2) The situation in this case represented a clear violation of the plaintiffs' constitutional rights as registered landowners who had been deprived of their enjoyment of the land's exclusive feature, namely its 'freehold interest'. The term 'deprive' under art 13 of the Constitution should not only encompass the reclamation of land without consent but should also be interpreted broadly to include the deprivation of the enjoyment of

exclusive features of the land. The conversion of the plaintiffs' land had led to a depreciation in land value and in due course for the owners to incur cost to renew the lease after the expiration of the 99-year lease (see para 19).

(3) The primary issue of the conversion of land from freehold to leasehold status had repeatedly been scrutinised by the courts, particularly concerning the legality and authority under which such conversions were executed. Whether the action of converting land tenure from freehold to leasehold by a land administrator or any government authority was ultra vires, ie, beyond the powers conferred by law. In the Federal Court case of *Pengarah Tanah Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 ('*Sri Lempah*'s case'), all three judges were unanimous in dismissing the appeal by holding that the government had no power to make the applicant give up its freehold title and receive in exchange a 99-year lease. The decision in *Sri Lempah*'s case was relied upon by the Court of Appeal in *Leo Leslie*'s case. Further, in a recent case of *Wong Sew Ling & Ors v Pendaftar Hakmilik Negeri Perak* [2023] MLJU 437, His Lordship Su Tiang Joo JC had also referred to the *Sri Lempah*'s case and *Leo Leslie*'s case. In another recent case of *Lee Fong Kee v Pengarah Tanah dan Galian, Wilayah Persekutuan, Kuala Lumpur* [2023] MLJU 1393, Her Ladyship Evrol Mariette Peters J held that 'It was undeniable, therefore, that the act of the respondent in issuing, to SPKB, leasehold title instead of freehold title, was ultra vires the National Land Code, and had contravened art 13 of the Federal Constitution' (see paras 21–25).

(4) The defendant's contention that the developer/owner consented to subdivision terms could not be sustained because the consent was implicit and did not extend or limit jurisdictional challenge that the conversion was ultra vires. This point was covered in *Leo Leslie*'s case (see para 26).

(5) In conclusion, the court found substantial merit in the plaintiffs' contention regarding the improper conversion of their land tenure from perpetual to a 99-year leasehold. The plaintiffs had shown that the land, originally under a master title with perpetual ownership, was erroneously registered under a 99-year leasehold following subdivision, which had deprived them of their rights as registered landowners. This error by the defendant, the Land Registrar of Negeri Perak, had led to a devaluation of the property and potential future financial burdens for the plaintiffs. The court took cognisance of cases decided in a similar vein in respect of neighbouring properties as well as the long-standing decisions from the apex court on the same issue (see para 27).

A **[Bahasa Malaysia summary**

Isu utama dalam kes ini berkisar tentang dakwaan plaintif-plaintif bahawa mereka adalah pemilik-pemilik berdaftar dua bidang tanah yang pada asalnya dipegang di bawah hakmilik induk dengan pemilikan kekal tetapi sejurus pecah bahagian dilakukan oleh pendaftar tanah ('defendan'), hakmilik individu yang dikeluarkan untuk tanah-tanah ini telah tersilap didaftarkan dengan status pegangan pajak 99 tahun dan bukannya selama-lamanya. Plaintif-plaintif berhujah bahawa: (a) situasi dalam kes ini menunjukkan pencabulan jelas hak perlembagaan mereka sebagai pemilik-pemilik tanah berdaftar di bawah perkara 13 Perlembagaan Persekutuan ('Perlembagaan'); (b) defendan hanya mempunyai kuasa untuk mengarahkan pemilik-pemilik tanah berdaftar menyerahkan hakmilik tanah di bawah seksyen-seksyen khusus iaitu ss 130 dan 134 Kanun Tanah Negara ('KTN') tetapi penukaran pegangan tanah daripada kekal kepada pajakan oleh defendan adalah tidak sejajar dengan KTN dan ultra vires Perlembagaan; dan (c) memandangkan pengeluaran hakmilik asal adalah untuk selama-lamanya menurut s 204E(3A) KTN, oleh itu, tanah yang diberimilikan semula, selepas pecah bahagian juga seharusnya berstatus selama-lamanya. Plaintif-plaintif memohon, melalui saman pemula, pembetulan untuk memulihkan pemilikan kekal asal atau status pegangan bebas. Berhubung dengan permohonan ini, plaintif-plaintif bergantung kepada s 380 KTN untuk berhujah bahawa pendaftar hakmilik dibenarkan untuk membetulkan apa-apa kesilapan dalam hakmilik tanah dan bagi menyokong hujah ini, plaintif-plaintif memetik prinsip kesaksamaan di sisi undang-undang seperti yang dinyatakan dalam perkara 4(1) dan 8(1) Perlembagaan dan kes serupa sebelumnya (AA-24NCvC-428–09 tahun 2016), di mana perintah serupa telah diberikan oleh mahkamah. Dalam menentang permohonan plaintif-plaintif, defendan berhujah bahawa plaintif-plaintif sepatutnya memfailkan permohonan semakan kehakiman dan bukannya saman pemula. Defendan juga berhujah bahawa menurut ss 197 dan 76 KTN (Disemak — 2020), penukaran tanah daripada pegangan bebas kepada pegangan pajak adalah dalam prerogatif Pihak Berkuasa Negeri. Defendan seterusnya menegaskan bahawa tidak menjadi tanggungjawab mereka untuk memaklumkan plaintif-plaintif mengenai tempoh pajakan, kerana plaintif-plaintif telah membeli tanah daripada pemaju/pemilik terdahulu yang telah bersetuju dengan terma-terma pajakan dengan Pihak Berkuasa Negeri.

Diputuskan, membenarkan tuntutan plaintif-plaintif tanpa perintah berkaitan kos:

(1) Pencabaran oleh defendan mengenai cara memulakan prosiding, yang sepatutnya melalui semakan kehakiman, bukanlah satu perkara yang pasti. Ia hanyalah peraturan umum yang mempunyai pengecualian. Dalam hal ini, mahkamah merujuk kepada kes *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of*

Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor) [2015] 1 MLJ 255 ('kes *Leo Leslie*') yang telah merujuk kepada kes *Litus Jau & Anor v Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 MLJ 794. Memandangkan kes-kes yang diputuskan tersebut adalah berkaitan secara langsung dan keadaan khusus kes di mana isu dominan dalam kes semasa ialah isu hak persendirian, penggunaan saman pemula untuk memulakan prosiding adalah sesuai, mematuhi pengecualian yang ditetapkan kepada peraturan am yang memerlukan semakan kehakiman (lihat perenggan 17–18).

(2) Keadaan dalam kes ini menunjukkan pencabulan jelas hak perlembagaan plaintif-plaintif sebagai pemilik-pemilik tanah berdaftar yang telah dilucutkan kenikmatan ciri eksklusif tanah tersebut, iaitu 'kepentingan pegangan bebas'. Istilah 'dilucutkan' di bawah perkara 13 Perlembagaan bukan sahaja harus merangkumi pengambilan tanah tanpa persetujuan tetapi juga harus ditafsirkan secara meluas untuk memasukkan pelucutan kenikmatan ciri-ciri eksklusif tanah tersebut. Penukaran tanah plaintif-plaintif telah membawa kepada susut nilai dalam nilai tanah tersebut dan pada masa akan datang akan mengakibatkan pemilik-pemilik untuk menanggung kos bagi memperbaharui pajakan selepas tamat tempoh pajakan 99 tahun (lihat perenggan 19).

(3) Isu utama penukaran tanah daripada pegangan bebas kepada status pajakan telah berulang kali diteliti oleh mahkamah-mahkamah, terutamanya mengenai keabsahan dan kuasa di mana penukaran tersebut dilaksanakan. Sama ada tindakan menukar pegangan tanah daripada pegangan bebas kepada pegangan pajak oleh pentadbir tanah atau mana-mana pihak berkuasa kerajaan adalah ultra vires, iaitu, di luar kuasa yang diberikan oleh undang-undang. Dalam kes Mahkamah Persekutuan *Pengarah Tanah Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 ('kes *Sri Lempah*'), ketiga-tiga hakim sebulat suara menolak rayuan tersebut dengan berpendapat bahawa kerajaan tidak mempunyai kuasa untuk mengarahkan pemohon melepaskan hakmilik pegangan bebasnya dan menerima sebagai pertukaran pajakan 99 tahun. Keputusan dalam kes *Sri Lempah* telah diikuti oleh Mahkamah Rayuan dalam kes *Leo Leslie*. Selanjutnya, dalam kes terbaru *Wong Sew Ling & Ors v Pendaftar Hakmilik Negeri Perak* [2023] MLJU 437, Yang Arif Su Tiang Joo PK juga telah merujuk kepada kes *Sri Lempah* dan kes *Leo Leslie*. Dalam satu lagi kes terbaru *Lee Fong Kee v Pengarah Tanah dan Galian, Wilayah Persekutuan, Kuala Lumpur* [2023] MLJU 1393, Yang Arif Evrol Mariette Peters H berpendapat bahawa 'It was undeniable, therefore, that the act of the respondent in issuing, to SPKB, leasehold title instead of freehold title, was ultra vires the National Land Code, and had contravened art 13 of the Federal

Constitution' (lihat perenggan 21–25).

(4) Hujahan defendan bahawa pemaju/pemilik bersetuju dengan terma-terma pecah bahagian tidak dapat dipertahankan kerana persetujuan tersebut adalah tersirat dan tidak melanjutkan atau mengehadkan pencabaran bidang kuasa bahawa penukaran tersebut adalah ultra vires. Perkara ini telah dibincangkan dalam kes *Leo Leslie* (lihat perenggan 26).

(5) Kesimpulannya, mahkamah mendapati merit yang besar dalam hujahan plaintif-plaintif berhubung penukaran tidak wajar pegangan tanah mereka daripada kekal kepada pegangan pajak 99 tahun. Plaintif-plaintif telah menunjukkan bahawa tanah tersebut, pada asalnya di bawah hakmilik induk dengan pemilikan kekal, telah tersilap didaftarkan di bawah pegangan pajakan 99 tahun berikutan pecah bahagian, yang telah melucutkan hak mereka sebagai pemilik-pemilik tanah berdaftar. Kesilapan oleh defendan, Pendaftar Tanah Negeri Perak, telah membawa kepada penurunan nilai hartanah tersebut dan potensi beban kewangan masa depan ke atas plaintif-plaintif. Mahkamah mengambil tahu kes-kes yang diputuskan dalam nada yang sama berkenaan dengan hartanah-hartanah yang bersebelahan serta keputusan-keputusan yang bertahan lama daripada mahkamah-mahkamah tertinggi mengenai isu yang sama (lihat perenggan 27).]

Cases referred to

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417; [1990] 1 MELR 34; [1991] 1 CLJ 159, SC (refd)

Ipoh Garden Bhd v Pengarah Tanah Dan Galian, Perak, Ipoh [1979] 1 MLJ 271; [1978] 1 MLRH 609 (refd)

Kelana Megah Development Sdn Bhd v Kerajaan Negeri Johor and another appeal [2016] MLJU 1649; [2016] 8 CLJ 804, CA (refd)

Lee Fong Kee v Pengarah Tanah dan Galian, Wilayah Persekutuan, Kuala Lumpur [2023] MLJU 1393; [2023] 6 MLRH 30, HC (refd)

Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor) [2015] 1 MLJ 255; [2014] 5 MLRH 211, CA (refd)

Litus Jau & Anor v Boustead Pelita Tinjar Sdn Bhd & Ors [2014] 1 MLJ 794, CA (refd)

Micheal Lee Fook Wah v Minister of Human Resources Malaysia & Anor [1998] 1 MLJ 305; [1998] 1 CLJ 227; [1997] 4 AMR 4258 ; [1997] 1 MELR 28; [1997] 2 MLRA 91, CA (refd)

Ngo Ong Chung & Ors v Pengarah Tanah dan Galian Perak Darul Ridzuan [2013] 10 MLJ 879, HC (refd)

Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn

Bhd [1979] 1 MLJ 135; [1978] 1 MLRA 132, FC (refd)
Pinang Sepadan Sdn Bhd & Anor v Bumijaya Pengurusan Sdn Bhd & Ors [2019] MLJU 685; [2019] 1 LNS 1011; [2019] AMEJ 1395, HC (refd)
Wong Sew Ling & Ors v Pendaftar Hakmilik Negeri Perak [2023] MLJU 437, HC (refd)
Yayasan Selangor v Persada Istimewa Sdn Bhd [2017] MLJU 777; [2017] 1 LNS 792, HC (refd)

Legislation referred to

Federal Constitution arts 4(1), 8(1), 13
Land Enactment 1903
National Land Code ss 76, 130, 134, 197, 204E(3A), 380

Soo Liang Xhe (Ding & Co) for the plaintiffs.
Sharifah Izura bt Syed Mashor (Assistant State Legal Advisor, Perak Legal Advisor's Office) for the defendant.

Moses Susayan JC:

[1] The plaintiffs, Lim Poh Chuen and Lim Tse Hong, are challenging the validity of a 99-year lease attributed to lands under titles PN24677 Lot 26272 and PN24678 Lot 26273, located in Mukim Sitiawan, Daerah Manjung, Negeri Perak. These disputed lands are traced back to CT 21246 Lot 10471, commonly referred to as the 'master title'. Past records link this master title to grant for Land No 9086, which, according to the Land Enactment 1903 holds a perpetual tenure.

[2] The defendant being the Land Registrar of Negeri Perak is responsible for accepting old grants to convert them into new ones. The relief sought by the plaintiffs in the originating summons are as follows:

(a) a declaration that the lands, currently registered under a 99-year lease, are invalid and void;

(b) the liberty to file applications for ancillary relief, if necessary, to give effect to the orders granted in this application;

(c) orders for financial institutions and/or banks to hand over the original grant of land title to the relevant land office so that the status of the land title can be changed from a 99-year lease to perpetuity (if applicable); and

(d) the costs of this action to be costs in the cause.

[3] Like the defendant in this case, there were other owners of the land from the same master title had made similar application, in Suit Nos AA-24NCVC-428–09 of 2016 and AA-24NCVC-102–03 of 2015,

where 'Pendaftar Hakmilik Negeri Perak' was named as the defendant and their applications were allowed by the court. When a court encounters a situation comparable to past cases, it considers how those cases were resolved and aims to apply similar reasoning and outcomes. This helps maintain consistency and coherence within the legal system, fostering trust and confidence in the administration of justice. In *Lee Fong Kee v Pengarah Tanah dan Galian, Wilayah Persekutuan, Kuala Lumpur* [2023] MLJU 1393; [2023] 6 MLRH 30, when the court was addressed on similar cases in the past where the court had ordered in favour of the applicant, Her Ladyship Evrol Mariette Peters J said:

> It was also brought to this court's attention that the respondent had, in several other cases, acceded to consent orders to be recorded, so that the leasehold titles held by these other property owners be reverted to their original freehold status. The respondent hastily submitted that these consent orders were irrelevant to this application. *This court was, however, unable to agree with the respondent's contention, as these consent orders, although not involving Lots 153 and 4026, were indicative of the consistency (or otherwise) of the conduct of the respondent, especially since the issues in those cases were the same as those in this application* (paras 20–21). (Emphasis added.)

[4] The core issue in the present case revolves around the plaintiffs' assertion that they are the registered owners of the lands in question, which were originally held under a master title certificate CT 21246 Lot 10471, with perpetual ownership. However, following development into a housing scheme and subdivision by the defendant, the individual titles issued for these lands were erroneously registered with a 99-year leasehold status instead of in perpetuity.

[5] The plaintiffs submit that this 'mistake' by the defendant has denied them their rights as registered landowners, causing a depreciation in the land value and potentially imposing future costs of premium for renewal after the expiry of 99-year term lease. The plaintiffs contend that the defendant exceeded its authority by changing the land tenure and seek a correction to restore the original perpetual ownership or freehold status.

[6] The arguments of the parties are based on various National Land Code provisions, including s 204E(3A) of the National Land Code ('the NLC') which stipulates the conditions under which land can be re-alienated and the tenure of such alienation. Section 204E(3A) of the NLC provides:

> 204E(3A) Where the original title is a title in perpetuity, unless the proprietor apply for the land to be re-alienated to him for a term of years, the period for which the land is to be re-alienated shall also be in perpetuity, and where the original title is for a term of years, the period for which the land is to be re-alienated shall not be less than the remainder of the term of years for which the land was held under the original title, except where the State Authority approves the application under

section 90A, and in the case where there are dissimilarities as to the periods for which the original titles are held, the period for which the lands are to be re-alienated shall be as the State Authority may think fit.

THE PLAINTIFFS' SUBMISSION

[7] The plaintiffs submit that art 13 of the Federal Constitution, which emphasises that no person shall be deprived of property safe in accordance with the law, is pertinent to their case. The situation in this case represents a clear violation of their constitutional rights as registered landowners who have been deprived of their enjoyment of the land's exclusive feature, namely its 'freehold interest.' The term 'deprive' under art 13 of the Federal Constitution should not only encompass situation of reclamation of land without consent but also be interpreted broadly to include the deprivation of the enjoyment of exclusive features of the land. The conversion of the plaintiffs' land has led to a depreciation in land value and in due course for the owners to incur cost to renew the lease after the expiration of the 99-year lease.

[8] The plaintiffs submit that the defendant only has the authority to direct, registered landowners to surrender land titles under specific sections of ss 130 and 134 of the NLC. But the conversion of land tenure from perpetual to leasehold by the defendant is not aligned with the NLC and ultra vires the Federal Constitution.

[9] The plaintiffs submit that since the original issuance of title was in perpetuity according to s 204E(3A) of the NLC, therefore the re-alienated land, post-subdivision should also be in perpetuity. They cited cases such as *Ipoh Garden Bhd v Pengarah Tanah Dan Galian, Perak, Ipoh* [1979] 1 MLJ 271; [1978] 1 MLRH 609, *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135; [1978] 1 MLRA 132 and *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 1 MLJ 255; [2014] 5 MLRH 211, the plaintiffs submit the defendant does not have the power to change land holding terms from freehold to leasehold upon subdivision approval.

[10] The plaintiffs in the circumstance rely on s 380 of the NLC to submit that the registrar of titles is allowed to correct any mistakes in land titles, as such asserts that the defendant should correct the tenure of their land from the 99-year lease to the original 'freehold' interest. Again, the plaintiffs sought to rely on the argument in support by citing the principle of equality before the law as stated in arts 4(1) and 8(1) of the Federal Constitution and a previous

similar case (AA-24NCvC-428–09 of 2016), where a similar order was granted by the court.

THE DEFENDANT'S SUBMISSION

[11] The defendant, *Pendaftar Hakmilik Negeri Perak*, argues that the plaintiffs should have filed a judicial review application to challenge the decision of the State Authority (*Pihak Berkuasa Negeri — PBN*), as per the Courts of Judicature Act 1964 (Act 91). This Act empowers the High Court to issue prerogative writs, including for judicial review, which is the appropriate process of challenging public authority decisions.

[12] The defendant cites cases such as *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417; [1990] 1 MELR 34; [1991] 1 CLJ 159 and *Micheal Lee Fook Wah v Minister of Human Resources Malaysia & Anor* [1998] 1 MLJ 305; [1998] 1 CLJ 227; [1997] 4 AMR 4258; [1997] 1 MELR 28; [1997] 2 MLRA 91, to support that judicial review focuses on the decision-making process rather than the decision itself. They contend that the court should not question the administrative decision of the defendant unless it was made ultra vires or unjustly.

[13] Referring to ss 197 and 76 of the NLC (revised 2020) the defendant argues that the conversion of land from freehold to leasehold is within the prerogative of the State Authority. They contend that the land in question was surrendered to the PBN for development and upon surrender, the status of the land reverted to State land. Subsequently, PBN legally granted the land back to the original developers/owners under a 99-year lease, as stipulated by the NLC. Sections 197 and 76 of the NLC (revised 2020) is appended below:

> Section 197 — Applications for approvai of surrender of whole.
>
> (1) Any application for approvai by a proprietor wishing to surrender the whole of the land comprised in his title shall be made in writing to the Land Administrator in Form 12A, and shall be accompanied by:
>
> (a) such fee as may be prescribed;
>
> (b) all such written consents to the making thereof as are required under paragraph (c) of sub-section (1) of s 196; and
>
> (c) unless the proprietor alleges that it is for any reason incapable of production, the issue document of title to the land.
>
> (2) Where the proprietor is unable to produce the issue document of title because it is in the hands of any person or body as chargee or lien-holder, the application shall be accompanied instead by a copy of a request by the proprietor, served on that person or body under sub-section (2) of s 244 or, as the case may be, sub-section (4) of s 281, for the production of the document at the Land Office within fourteen days of the date thereof.

(3) Upon receipt of the application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land.

(4) Where the application relates to estate land:

(a) the Land Administrator shall refer it to the Estate Land Board established under s 214A for its recommendations; and

(b) the Secretary of the Estate Land Board shall convey its recommendations as expeditiously as possible to the Land Administrator.

Section 76 — Meaning of alienation

The alienation of State land under this Act shall consist of its disposal by the State Authority:

(a) for a term not exceeding ninety-nine years; (aa) in perpetuity:

(i) where the Federal Government requires the State Authority to cause a grant in perpetuity to be made to the Federal Government or to a public authority or where the Federal Government and the Government of the state agree to make a grant in perpetuity to the Federal Government;

(ii) where the State Authority is satisfied that the land is to be used for a public purpose; or

(iii) where the State Authority is satisfied that there are special circumstances which render it appropriate to do so;

(b) in consideration of the payment of an annual rent;

(c) in consideration, unless the State Authority thinks fit to exempt therefrom in any particular case, of the payment of a premium;

(d) subject, unless the State Authority otherwise directs pursuant to sub-section (5) of s 52, to a category of land use determined in accordance with sub-sections (2) and (3) of that section; and

(e) subject to such conditions and restrictions in interest as may be imposed by the State Authority under, or are applicable thereto by virtue of, any provision of this Act.

Provided that nothing in paragraph (aa) shall enable the State Authority to dispose of any part of the foreshore or sea-bed for a period exceeding ninety-nine years; and paragraph (d) shall not apply to the alienation of land under this Act in pursuance of an approval given by the State Authority before the commencement thereof.

[14] The defendant refers to cases like *Kelana Megah Development Sdn Bhd v Kerajaan Negeri Johor and another appeal* [2016] MLJU 1649; [2016] 8 CLJ 804, *Yayasan Selangor v Persada Istimewa Sdn Bhd* [2017] MLJU 777; [2017] 1 LNS 792 and *Pinang Sepadan Sdn Bhd & Anor v Bumijaya Pengurusan Sdn Bhd & Ors* [2019] MLJU 685; [2019] 1 LNS 1011; [2019] AMEJ 1395 to support their argument that the conversion to a 99-year leasehold is permissible and rational.

[15] The defendant emphasises that it was not their responsibility to inform the plaintiffs about the lease period, as the plaintiffs purchased the land from the developers/previous owners who had agreed to the lease terms with PBN.

[16] The defendant concludes that their actions were correct, both procedurally and legally, according to existing law provisions, and prays for the dismissal of the plaintiffs' application with costs.

DECISION OF THE COURT

[17] The defendant's challenge regarding the mode of commencing proceedings, which should have been by way of judicial review, is not a matter of course. It is merely a general rule with exceptions. In *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 1 MLJ 255 (CA), a case which also decided on appeal, the issue of converting an interest in land from perpetuity to a 99-year lease and where the proceedings were commenced by originating summons. His Lordship Abdul Aziz Ab Rahim JCA (as he then was) referred to a passage by His Lordship Raus Sharif PCA from the case of *Litus Jau & Anor v Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 MLJ 794, who had this to say:

> [42] Learned senior federal counsel also submitted that the appellant's application is time-barred under O 53 of Rules of the High Court, 1980 which provides under r 3(6) that the application for judicial review must be made within 40 days from the date when the decision was first communicated to the appellant. (Under the new O 53 Rules of Court 2012, the limitation period is three months). It is the contention of learned senior federal counsel that the application to challenge the decision of the Land Administrator in this case, must be made by way of judicial review as the appellant was challenging the decision of a public authority namely the Land Administrator. However, in *Litus Jau & Anor v Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 MLJ 794, *Raus Sharif PCA, speaking for the Court of Appeal, after reviewing the House of Lord's decision in O'Reilly v Mackman [1982] 2 All ER 1124, reiterated that the principle that a plaintiff who alleges infringement by a public authority of his rights must do so by way of judicial review as to allow him to proceed by way of an ordinary action would be against public policy and an abuse of process of court, is only a general rule. Therefore, not every case where a challenge is mounted against a decision by a public authority must be by way of judicial review. There are exceptions to this general rule*. In this respect, the learned judge in *Litus Jau* had referred to the Federal Court case of *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145; [2010] 5 CLJ 865, and had followed the guidelines stated in that case in ascertaining the proper mode of proceedings in public law matters. The guide is this:
>
> > *If the claim for infringement is based solely on substantive principles of public law then the appropriate process should be by way of O 53 of the RHC. If it is a mixture of public and private law then the court must ascertain which of the two is more*

> *predominant. If it has substantial public law element then the procedure under O 53 of the RHC must be adopted … But if the matter is under private law though concerning a public authority, the mode to commence such action is under O 53 is not suitable* … Much depends on the facts of the case.
>
> [43] *In the present case, though the appellant was challenging the decision of the Land Administrator who is a public authority, the rights that were affected by the decision are the private rights of the appellant, namely, the right to ownership and enjoyment of land*. Before the decision, the appellant would able to enjoy tenure of freehold land; however, after the decision, that enjoyment was somehow affected in that the enjoyment is now limited only to the number of years approved by the Land Administrator. *Therefore, the dominant issue in this case is the issue of a private rights. Accordingly, the appellant has the option of either proceeding under O 53 Rules of the High Court 1980 (now O 53 Rules of Court 2012) or by ordinary action by way of originating summons*. (Emphasis added.)

[18] Given the decided cases are directly on point and the specific circumstances of the case where the dominant issue in this case is the issue of a private rights, the use of originating summons to commence proceedings was appropriate, adhering to established exceptions to the general rule requiring judicial review.

[19] Moving on to art 13 of the Federal Constitution, which is not a contentious issue between the parties but is a point raised by the plaintiffs in support of their case. It emphasises that no person shall be deprived of property safe in accordance with the law, is pertinent to this case. The situation in this case represents a clear violation of the plaintiffs' constitutional rights as registered landowners who have been deprived of their enjoyment of the land's exclusive feature, namely its 'freehold interest.' The term 'deprive' under art 13 of the Federal Constitution should not only encompass the reclamation of land without consent but should also be interpreted broadly to include the deprivation of the enjoyment of exclusive features of the land. The conversion of the plaintiffs' land has led to a depreciation in land value which in due course for the owners to incur to renew the lease after the expiration of the 99-year lease.

[20] In *Ngo Ong Chung & Ors v Pengarah Tanah dan Galian Perak Darul Ridzuan* [2013] 10 MLJ 879, the court in holding the conversion of interest in the land from perpetuity to a 99-year lease is in contravention of art 13 of the Federal Constitution said:

> [11] The other case of *Ipoh Garden Bhd* also had similar facts. In an application for subdivision of the applicant's land, the state authority sought to impose a condition of approval, that is, that leasehold titles be issued in lieu of freehold titles. *The High Court held that the imposition of such a condition was ultra vires the National Land Code*.

A [12] These cases highlight an important principle in administrative law in that a public authority may not act outside its powers or ultra vires. Any such administrative act or order will be void at its inception, a nullity and having no legal effect. The right to one's property is found in art 13(1) of the Federal Constitution which provides: No person shall be deprived of property save in accordance with
B law'. This must mean that a mere administrative act cannot deprive a person of his or her property. Any act to deprive a person of his or her property must be based on law and in accordance with the procedure prescribed by that law.

[13] *In the instant case, there can be little doubt that the act of reducing the tenure of land from freehold to leasehold was not based on anv law. It was ultra vires the NLC and*
C *contravened art 13(1) of the Federal Constitution*. (Emphasis added.)

[21] In respect of the primary issue of the conversion of land from freehold to leasehold status this has repeatedly been scrutinized by the courts, particularly concerning the legality and authority under which such
D conversions are executed. Whether the action of converting land tenure from freehold to leasehold by a land administrator or any government authority is ultra vires, ie, beyond the powers conferred by law.

E **[22]** In *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135; [1978] 1 MLRA 132 , the Federal Court through Suffian LP, J Raja Azlan Shah AG CJ and Chang Min Tat FCJ where all three judges had given their respective grounds, were unanimous in dismissing the appeal by holding that the Government had no power to make
F the applicant give up its freehold title and receive in exchange a 99 year lease. In the grounds of judgement of Suffian LP, His Lordship in answer to question 'whether the Committee has power to make the developer give up its freehold title and receive in exchange a 99-year lease' relied on English cases and stated this:

G ... English cases are of course decisions on the peculiar words used in the Town and Country Planning Act, whereas here we are concerned with the peculiar words used in the National Land Code, but nevertheless I am of the opinion that English cases afford principles that may be followed here. What are these principles? They are:

1. *The approving authority does not have an uncontrolled discretion to impose*
H *whatever conditions it likes*.

2. The conditions, to be valid, must fairly and reasonably relate to the permitted development.

3. The approving authority must act reasonably and planning conditions
I must be reasonable.

4. *The approving authority is not at liberty to use its power for an ulterior object, however desirable that object may seem to it in the public interest*.

Applying these principles to the present case, it is plain, in my judgment, that the *Committee does not have the power it claims to have*. The condition which the

applicant objected to does not relate to the permitted development, is unreasonable, and is used for an ulterior object, the object being to bring developed land into line with newly alienated land as to which, we are told, since the war only leases, not titles in perpetuity, are granted ...

[23] In *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 1 MLJ 255; [2014] 5 MLRH 211, the Court of Appeal relying on among others the case of *Sri Lempah Enterprise Sdn Bhd*, allowed the appeal of the applicant. At held No 2 states:

The respondent or its predecessor had no authority or legal power to reduce the tenure of the appellant's land holding from perpetuity to leasehold. *By making that change in land tenure as a condition for approval of the appellant's application for subdivision, the respondent or its predecessor had acted ultra vires the NLC and the act was null and void*. (Emphasis added.)

[24] In a recent case of *Wong Sew Ling & Ors v Pendaftar Hakmilik Negeri Perak* [2023] MLJU 437, His Lordship Su Tiang Joo JC referring to the cases of *Sri Lempah Enterprise Sdn Bhd* and *Leo Leslie Armstrong* among others, stated:

... *The law on whether the State authority when approving a proposed conversion of category of land use and subdivision of land and in the process of re-alienating the land may reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or in common parlance, from freehold to leasehold has been settled — it cannot*.

See, inter alia, *Pengarah Tanah Dan Galian, Wilavah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1978] 1 MLJ 135 (FC), *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 1 MLJ 255; [2015] 2 CLJ 10 (CA) where it was held that to do so would be ultra vires the provision of s 204E (3) of the National Land Code ...

[25] Also in another recent case of *Lee Fong Kee v Pengarah Tanah dan Galian, Wilayah Persekutuan, Kuala Lumpur* [2023] MLJU 1393; [2023] 6 MLRH 30, in High Court, the Her Ladyship Evrol Mariette Peters J said:

(1) Freehold ownership provided the highest form of propertv rights, granting the owner complete ownership and control over the land. When the land was converted to leasehold, the owner's rights were diminished, as he no longer had indefinite ownership. The value of the land might also decline due to the perceived reduction in ownership rights and limited duration of leasehold ownership. Freehold ownership also empowered individuals with autonomy over their properties, allowing them to make decisions about use, maintenance and improvement to their own preference. A reduction in land status limited this autonomy by subjecting

property owners to the terms and conditions of the leasehold, potentially restricting their freedom to use or dispose of their properties. In this instance, the act of the respondent in reducing the status of Lots 153 and 4026 from freehold to leasehold was eventually an interference with the right to property, as it had diminished the bundle of rights traditionally associated with freehold ownership. *It was undeniable, therefore, that the act of the respondent in issuing to SPKB leasehold titles instead of freehold titles was the Code, and had contravened art 13 of the Federal Constitution*, which was the backdrop to this application (paras 17–19). (Emphasis added.)

[26] The defendant contends that they are entitled to convert the interest to a leasehold based on the fact that the government land has been officially granted under s 76 of the National Land Code (revised 2020) for a 99-year tenure. The defendant argues that at the time of purchase from the original developer/owner, the plaintiffs were aware of the land's 99-year leasehold status, as this was clearly recorded on the title documents. As such they are not responsible for informing the plaintiffs about the lease period since the transaction was between the plaintiffs and the original developer/owner, and the defendant was not involved in these dealings. In other words, the defendant's contention that the developer/owner consented to subdivision terms cannot be sustained because the consent is implicit and does not extend or limit jurisdictional challenge that the conversion is ultra vires. In *Leo Leslie Armstrong v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur*, this point was covered and the court said:

> Thirdly, with regard to the learned senior federal counsel's argument that the appellant in this appeal had indicated their consent to the terms imposed by the respondent in approving the appellant's application for subdivision, thereby distinguishing the facts in this appeal from the facts in *Sri Lempah* where the applicant had not consented to the change from title in perpetuity to leasehold, we are of the view that there is no merit in this argument. The learned Suffian LP had said at p 145 of the report that in an application for change of conditions of land use etc under s 124(1) of the NLC, the question of consent does not arise as consent is implicit in the application. Moreover, we agree with the submission by learned counsel for the appellant that on the authority of *Federal Hotel Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers* [1983] 1 MLJ 175, which states that:
>
> > no consent or acquiescence can confer on a court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdiction or can estop the consenting party from subsequently maintaining that such court or tribunal has acted without jurisdiction ... the issue of *consent or acquiescence is irrelevant*. (Emphasis added.)

CONCLUSION

[27] In conclusion, I find substantial merit in the plaintiffs' contention regarding the improper conversion of their land tenure from perpetual to a 99-year leasehold. The plaintiffs have shown that the land, originally under a

master title with perpetual ownership, was erroneously registered under a 99-year leasehold following subdivision, which has deprived them of their rights as registered landowners. This error by the defendant, the Land Registrar of Negeri Perak, has led to a devaluation of the property and potential future financial burdens for the plaintiffs. This court takes cognisance of cases decided in a similar vein in respect of neighbouring properties and long-standing decisions from the apex court on the same issue.

[28] For the reasons and conclusions mentioned above, I have allowed the plaintiffs' claim in encl 1 with no orders as to costs.

Plaintiffs' claim allowed with no order as to costs.

Reported by Dzulqarnain Ab Fatar